DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 05-0034
Indiana Adjusted Gross Income Tax
For the Years 1998 through 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Federal Return.

Authority: 26 U.S.C.S. § 7701(a)(1); 26 U.S.C.S. § 7701(a)(14); United States v. Karlin, 785 F.2d 90 (3d Cir. 1986); United States v. Studley, 783 F.2d 934 (9th Cir. 1986); McKeown v. Ott, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985).

Taxpayer states that he is not a "person" or an "individual" required to file federal income tax returns and that, as a result, he is not required to file corresponding Indiana tax returns.

II. Indiana Adjusted Gross Income Tax Liability.

Authority: IC 6-3-1-3.5; Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003); Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); 45 IAC 3.1-1-1; I.R.C. § 62.

Taxpayer maintains that because he did not file corresponding federal income tax returns, Indiana law and the directions on the Indiana IT-40 form do not require him to file state income tax returns.

STATEMENT OF FACT

Taxpayer resides in Indiana. The Department of Revenue (Department) determined that taxpayer owed Indiana income tax for 1998 through 2001 and sent taxpayer notices of "Proposed Assessment" dated August 24, 2004.

Taxpayer disagreed with the proposed assessments and sent a protest to that effect. The protest was received by the Department on January 25, 2005. An administrative hearing was conducted during which taxpayer further explained the basis for his protest. This Letter of Findings results.

DISCUSSION

I. Federal Return.

Taxpayer maintains that was not required to file a federal income tax return because he is neither an "individual" nor a "person" required to do so. Taxpayer argues that he is not a "person" required to report his income or to pay tax on that income because he is a "sovereign" and is not subject to the provisions of the Internal Revenue Code (IRC). Taxpayer errs. The IRC clearly defines "persons" and sets out which persons are subject to federal taxes. 26 U.S.C.S. § 7701(a)(14) defines "taxpayer" as any person subject to any internal revenue tax. 26 U.S.C.S. § 7701(a)(1) defines a "person" as any individual, trust, estate, partnership, or corporation. Taxpayer's argument that a "sovereign" individual – such as himself – is not a "person" within the meaning of the IRC has been uniformly rejected. In United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986), the court affirmed the defendant's conviction for failing to file income returns and rejected the defendant's contention that he was "not a 'person' within the meaning of 26 U.S.C. § 7203" as "frivolous and require[ing] no discussion." In United States v. Studley, 783 F.2d 934, 937 n.3 (9th Cir. 1986), the court affirmed defendant's conviction for failing to file income tax returns on the ground that defendant was "an absolute freeborn, and natural individual" stating that "this argument has been consistently and thoroughly rejected by every branch of the government for decades." "*[A]rguments about who is a 'person' under the tax laws*, the assertion that 'wages are not income', and maintaining that payment of taxes is a purely voluntary function do not comport with common sense - let alone the law." McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (*Emphasis added*).

Taxpayer's argument, that he is not a "person" subject to the IRC or to the Indiana individual income tax, is not meritorious.

FINDING

Taxpayer's protest is denied.

II. Indiana Adjusted Gross Income Tax Liability.

Taxpayer argues that because he did not file federal returns for the years here at issue, he was not required to file state returns. According to taxpayer, because the IT-40 specifically requires that he "[e]nter [his] federal adjusted gross income from [his] federal return," he was compelled by force of law and under penalty of perjury to not file state returns.

The Indiana tax returns here at issue employ federal adjusted gross income as the starting point for determining the taxpayer's state individual income tax liability. Line one of the Indiana IT-40 form instructs the taxpayer to "Enter your federal adjusted gross income from your federal return (see page 10)."

IC 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code) . . . ." Thereafter, the Indiana statute defines specific addbacks and deductions peculiar to Indiana which modify the federal adjusted gross income amount. The Department's own regulation restates this formulation. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

> Adjusted Gross Income for Individuals Defined. For Individual, "Adjusted Gross Income" is Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:
>
> > (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
> > (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
> > (3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require an Indiana taxpayer use the federal adjusted gross income calculation – as determined under I.R.C. § 62 – as the starting point for determining that taxpayer's Indiana adjusted gross income.

Taxpayer's contention – that he was compelled by force of law to not report Indiana adjusted gross income because he declared no federal adjusted gross income – is patently without merit. The statute is plainly written and is unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 62 not merely as reported by the taxpayer. *See* Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The directions contained within the Indiana income tax form provide the individual taxpayer with abbreviated directions for completing the form and not the means for determining the taxpayer's adjusted gross income. The Indiana tax form instructs the taxpayer to put what number in what box. However, the taxpayer must not only put *a* number in the box, he must put the *correct* number in the box. The directions on the tax form notwithstanding, taxpayer is nonetheless required to actually perform the calculations necessary to determine his liability for Indiana adjusted gross income tax.

The Indiana Tax Court addressed taxpayer's contention in Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003). "[I]t must be remembered that tax forms are used merely as an aid for taxpayers in calculating their taxable income in accordance with the income tax law. Therefore, calculating Indiana's adjusted gross income begins with federal taxable income as *defined* by Section 61(a) of the United States Code, not as what a taxpayer *reports* on its federal tax form." Eibeck 779 N.E.2d at 1214 n.6 (*Emphasis in original*). Taxpayer's erroneous failure to file federal returns does not excuse the failure to file state returns; taxpayer's second error merely compounds the first.

FINDING

Taxpayer's protest is denied.

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